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FCC Mail Room

June 2, 2011

Commission's Secretary  
Office of the Secretary,  
Federal Communications Commission.  
445 12th St., SW, Room TW-A325,  
Washington, DC 20554

**WC Docket No. 11-59**

DOCKET FILE COPY ORIGINAL

Dear Sirs:

Thank you for the opportunity to comment on the right-of-way issues and tower siting related to broadband deployment. These comments are in behalf of the Kansas Association of Counties and our 103 member counties.

It is apparent from the questions that there is a perception that local governments have discriminated against broadband providers and that this discrimination has slowed the implementation of broadband. From a local government standpoint, broadband providers often rush to beat their competition to lucrative markets, and any delay is too much, and may affect their market share. This rush to beat the competition too often results in incomplete applications and proposals that are not well thought out. Broadband companies seem to object to local regulations that other utilities do not typically have a problem with, so it seems obvious the problem is broadband companies, not local requirements.

Kansas counties are not allowed by state law to charge a franchise fee (except for cable TV) or to discriminate against any utility. Right-of-way use permits are only for excavating in the right-of-way and attachments to existing poles are not regulated. All utilities are checked to insure that their facilities do not cause a safety issue and do not obstruct the installation of other utilities. Yet, this almost lack of regulation does not seem to be a sufficient incentive for the companies to install broadband in more scarcely populated areas. Almost half of Kansas' 105 counties have no zoning regulations and in these counties, no permit of any kind is required to erect a tower. However, we find that these rural areas are underserved. The least regulated and least served areas coincide. Therefore, we would suggest that the slow deployment of broadband is attributable to factors other than local requirements or regulations.

**Tower Siting Shot Clock Ruling**

Kansas counties have not been affected by the shot clock ruling. Collocation on existing towers is simply a building permit which normally

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takes a week to process if the application is in order. Applications for new tower sites are well within the 150 days except where tower locations applications were not made with regard to adverse affects on neighbors and resulting neighborhood backlash.

The shot clock ruling is an unnecessary influence on local zoning. Most of the delays have been due to poor choice of tower sites. Zoning is for the protection of adjacent land owners while recognizing the rights of land owners to develop their property.

### **The Application Process for right-of-way use approvals**

The application process is straightforward in all counties. Utility companies have been obtaining permits for years without problems. Broadband companies that have problems get in a hurry and often do not thoroughly read the instructions.

The question regarding difficulty in identifying the rights-of-way holder reflects that many times broadband employees are not properly trained to read a map, or look at the back of a sign that identifies the organization maintaining the road.

Permits for right-of-way use normally take less than two weeks. Those applications not processed within this time frame are usually incomplete or submitted to the wrong agency. A process that would expedite permit approval would be for the broadband company to fill in all the blanks and provide other required information.

### **Additional information on ROW charges.**

County right-of-way charges are the same for all utilities in Kansas and only include processing and inspection charges. To the extent that all right-of-way charges are uniform among all utilities the federal government has no role in determining if costs are reasonable.

### **Qualitative Information**

*To what extent are local requirements designed to achieve public interest goals, such as ensuring public safety, avoiding disruption of traffic, or maintaining roadways?* Local requirements are all about traffic safety, restoration of the right-of-way, and proper location to prevent blocking other utilities.

*What role do other civic goals play in guiding local rights of way and wireless governance decisions?* Broadband is a utility and is no more and

no less important than water and electricity, and is treated just like other utilities.

*Are there situations in which localities believe that infrastructure providers have unreasonably refused to build out broadband facilities despite best efforts on the part of the locality to encourage deployment through rights of way or wireless facility siting policies?* Yes, the most underserved areas of the state are rural areas. These rural areas have few if any regulations that would delay broadband installation. For instance, 50 of our 105 counties do not have zoning, so a tower can be constructed at any location without a permit of any kind, yet these rural areas remain relatively underserved while there is intense interest in increasing broadband capabilities in urban areas that already have reasonable service.

### **Updating Ordinances/Statutes**

In rural areas broadband deployment has not been delayed due to outdated regulations. Broadband providers are public utilities and are treated as such. Our challenge is to get broadband providers interested in providing service to rural areas.

*Do some regulations and policies encourage resource sharing, while others discourage it?* Zoning regulations normally require collocation on new towers, however, we think broadband providers discourage their competition from using their towers by requiring excessive rental to discourage competition.

*Do states and localities show any preference for collocated antennas or for the placement of wireless facilities on public property?* Collocation is encouraged where possible, except for public safety communication antennas where security is an issue.

### **Consistent or Differential Treatment**

Kansas law prohibits discriminatory treatment of public utilities, so all utilities have equal charges and requirements.

### **Presence or Absence of Uniformity**

There are always going to be some differences among local jurisdictions. Utilities just have to understand the differences and play by the rules. Water, electricity, telephone and cable providers understand this. Broadband as an industry has even less of a problem since so much of their facilities are over the airwaves. We find that most of the issues that broadband companies have are self-inflicted by rushing into an area without proper planning and coordination with local governments. The

lack of uniformity is mostly in urban areas between adjacent cities where broadband service is already adequate and the need for speed is related to their business plan to capture market share.

**Remaining questions from the NOI**

The federal government should not be involved in regulating the use of public right-of-way for broadband. Broadband deployment is somewhat delayed due to local regulations, but these regulations are needed to insure public safety and that the location of the facilities will not block other utilities. Broadband may blame local governments for delay but the real issue to them is not providing broadband service, but to capture market share. Broadband should be given no federal preference in the use of the right-of-way over other public utilities such as water, sewer, and electricity.

Very truly yours



Randall Allen  
Executive Director  
Kansas Association of  
Counties

**All filings related to this Notice should refer to WC Docket No. 11-59.**

Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- Paper Filers: Persons who choose to file by paper must file an original and four copies of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.